STATE OF MICHIGAN

COURT OF APPEALS

BRADLEY DELONG,

Plaintiff/Counter-Defendant-Appellant,

v

SAMUEL RAYMER,

Defendant/Counter-Plaintiff-Appellant,

and

DIAMOND AVIATION, INC.,

Defendant/Counter-Plaintiff.

UNPUBLISHED
June 22, 2006

No. 259211
Muskegon Circuit Court
LC No. 00-039989-CK

Before: Fort Hood, P.J., and Cavanagh and Servitto, JJ.

PER CURIAM.

Plaintiff Bradley Delong appeals as of right from the trial court's judgment, entered following a bench trial, finding no cause of action against defendant Samuel Raymer. We affirm.

Delong and Raymer were equal shareholders in Diamond Aviation, Inc. After accusing Delong of misusing corporate funds, Raymer filed a civil suit against Delong. On March 11, 1999, Delong and Raymer, represented by Robert Engel and Peter Tolley respectively, settled their differences by signing a settlement agreement. The settlement agreement required Delong to transfer his interest in Diamond Aviation to Raymer and Diamond Aviation. The settlement agreement also contained the following provision, known as "Paragraph 4C," which is the subject of the present appeal:

> Diamond Aviation, Inc. agrees to hold Transferor harmless from the payment of any of the outstanding liabilities and/or obligations listed on Exhibit A hereto, and agrees to assume and pay those liabilities and/or obligations listed in Exhibit A, as the same come due, said liabilities and/or obligations listed on Exhibit A being the liabilities and/or obligations of Diamond Aviation, Inc. and/or

> J & B Leasing, L.L.C. Transferee shall pay those items listed on Exhibit A, regardless of whether they have been personally guaranteed by Transferor.

When the obligations listed on Exhibit A were not fully paid, Delong filed the present lawsuit, seeking to enforce the settlement agreement. Delong maintains that Paragraph 4C personally obligated Raymer to pay the debts listed on Exhibit A of the settlement agreement.

In *Delong v Raymer*, unpublished opinion per curiam of the Court of Appeals, issued August 19, 2003 (Docket No. 237476), a panel of this Court referred to Paragraph 4C as an "indemnification section" and held that the settlement agreement was ambiguous regarding whether Raymer was personally obligated to pay the debts listed on Exhibit A. The case was remanded to the trial court to determine the parties' intent. On remand, the trial court determined that Raymer did not intend to obligate himself personally to pay the debts listed on Exhibit A. In making its conclusion, the trial court analyzed Paragraph 4C under the standards applicable to both a personal guaranty contract and an indemnification contract.

Delong first claims on appeal that the trial court erred in analyzing Paragraph 4C under the standards applicable to personal guaranty contracts. Delong makes two specific arguments: (1) the panel's specific finding in the previous appeal, that Paragraph 4C was an indemnification provision, precluded the trial court from analyzing Paragraph 4C as a personal guaranty contract; and (2) the trial court had no factual basis for analyzing Paragraph 4C as a personal guaranty contract. While we recognize Delong's arguments, we do not believe it is necessary to resolve these issues because the trial court also analyzed Paragraph 4C under the standards applicable to indemnity contracts, and we find no error in the trial court's analysis in that regard. Thus, we affirm the trial court's judgment on that basis.

Delong additionally claims on appeal that, because the trial court's factual findings could only support a decision in his favor, the trial court must have failed to apply the applicable rules of law. We disagree. We review a trial court's factual findings following a bench trial for clear error. *Villadsen v Mason Co Rd Comm*, 268 Mich App 287, 303; 706 NW2d 897 (2005). "A finding is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been made." *AFSCME v Bank One, NA*, 267 Mich App 281, 283; 705 NW2d 355 (2005). However, our review of a trial court's factual findings is not limited to clear error if the factual findings were influenced by an incorrect view of the law. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Indemnification contracts are to be construed in the same manner as contracts generally. *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 187; 678 NW2d 647 (2003); *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 172; 530 NW2d 772 (1995). If the language in a contract is clear and unambiguous, the contract will be enforced as written because "an unambiguous contractual provision is reflective of the parties' intent as a matter of law." *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). However, if the language in a contract is ambiguous, the parties' intent becomes a question for the factfinder, *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997), and the factfinder's inquiry into the parties' intent is not limited to the language of the contract. *Klapp v United Ins Group*, 468 Mich 459, 470; 663 NW2d 447 (2003). Our Supreme Court recently stated that "[t]he law is clear that where the language of the contract is ambiguous, the court can look to such extrinsic evidence as to the

parties' conduct, the statements of its representatives, and past practice to aid in interpretation." *Id.,* quoting *Penzien v Dielectric Products Engineering Co, Inc*, 374 Mich 444, 449; 132 NW2d 130 (1965). Because Paragraph 4C was ambiguous regarding whether Paragraph 4C imposed personal liability on Raymer, the trial court's inquiry into Delong's and Raymer's intent was not limited to the language of the settlement agreement. Accordingly, we cannot conclude that the trial court erred when it relied on Raymer's testimony that he never intended to obligate himself personally to pay off the loans listed on Exhibit A or when it considered Tolley's testimony that it was a mistake on his part to start the last sentence of Paragraph 4C with the word "transferee" instead of Diamond Aviation.

Nor can we conclude that the trial court's factual finding that Raymer never intended to obligate himself personally to pay the debts listed on Exhibit A is clearly erroneous. The testimony at trial established that, while Delong and Engel intended for Paragraph 4C to make Raymer personally liable for the debts listed on Exhibit A, Raymer and Tolley never had such an intention. Tolley substituted "Diamond Aviation, Inc" for "Transferee, jointly and severally" in the first sentence of Paragraph 4C to make clear that Diamond Aviation was to be the only party subject to an indemnification suit by Delong. Furthermore, Tolley admitted that it was a mistake on his behalf to start the second sentence in Paragraph 4C with the word "transferee," instead of Diamond Aviation. And, Engel admitted that the word could mean something other than both Raymer and Diamond Aviation together. Also, Engel and Tolley negotiated Paragraph 4C through letters. The two attorneys never discussed their intentions with regard to Paragraph 4C in person or over the telephone. Each attorney merely relied on his own interpretation of Paragraph 4C as the correct interpretation. Under these circumstances, we are not left with a definite and firm conviction that the trial court made a mistake in finding that Paragraph 4C did not personally obligate Raymer to pay the debts listed on Exhibit A. *AFSCME*, *supra*.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto